

# DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

## Clause wise Discussion on the Draft Constitution

### SECTION SEVEN

17th September 1949 to 16th November 1949.

### ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

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**Mr. President** : The first item is the Bill. Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** (Bombay: General): Mr. President, Sir, I move:

" That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions introduced on the 14th September 1949, be taken into consideration by the Assembly."

I would like to say just one or two words and inform the House as to why this Bill has become a necessity and what the Bill proposed to do in substance. The necessity for the Bill arises because of two circumstances. One is the provision contained in clause (3) of the proposed Article 308. This article 308 is to be found in the midst of what are called transitional provisions. Clause (3) of article 308 provides that:

" On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India, including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative, shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to and disposed of, by the Supreme Court,"

which means that on the date on which the Constitution comes into operation, the jurisdiction of the Privy Council will completely vanish.

The second circumstance which has necessitated the Bill is that it is proposed that this Constitution should come into operation sometime about the 26th January 1950. The effect of these two circumstances is that the Privy Council will have no jurisdiction to entertain any appeal or petition after the 26th January 1950, assuming that that becomes the date of the commencement of the Constitution. But what is more important is this that the Privy Council will not even have jurisdiction to deal with and dispose of appeals and petitions which

may be pending before it on the 26th January 1950. Now taking stock of the situation as it will be on the 26th January 1950 the position is this. There are at present seventy civil appeals and ten criminal appeals pending before the Privy Council. The Calendar of cases, which is prepared for, the next sitting of the Privy Council has set down twenty appeals for hearing and disposal. It is also a fact that that is probably the only sitting which the Privy Council will hold for the purposes of disposing of the Indian appeals before the date on which the Constitution comes into operation.

According to the information which we have, this list of cases which is prepared for hearing at the next session of the Privy Council contains about twenty appeals, which means that on the 26th January, 1950, sixty appeals will remain pending undisposed of; and the question really that we are called upon to consider is this. What is to be done with regard to these sixty appeals which are likely to remain pending before the Privy Council on the 26th January 1950?

There are, of course, two ways of dealing with this matter. One-way was to continue the jurisdiction of the Privy Council and dispose of all the appeals that are now pending before it. That was the procedure that was adopted in the Irish Constitution by article 37 whereby it was stated that nothing in their Constitution would affect the jurisdiction of the Privy Council to deal with matters that may be pending before them on the date of the Constitution. But as I pointed out, in the proposed article 308 clause (3), we do not propose to leave any jurisdiction to the Privy Council. We propose to terminate the jurisdiction of the Privy Council on the 26th January 1950. The only way out, therefore, is to provide that the jurisdiction of the Privy Council shall terminate, that their jurisdiction shall be conferred on the Federal Court and that they shall transfer all the cases which are pending before them on the 10th October, except the twenty cases to which I made a reference earlier to the jurisdiction of the Federal Court. This is what the Bill does.

Now, Sir, coming to the specific provisions of the Bill, it will be noticed that clause 2 abolishes the jurisdiction of the Privy Council over all courts in the territory of India. Clause 3 abolishes the jurisdiction of the Privy Council over the Federal Court, and clause 5 is the converse of clauses 2 and 3, because it proposes to confer the Privy Council jurisdiction on the Federal Court. Clause 4 deals with the matters that are pending before the Privy Council. Although clause 5 confers the Privy Council's jurisdiction on the Federal Court, clause 4 is a saving clause and saves the jurisdiction of the Privy Council in certain appeals and petitions which are pending before it. They may be classified under four heads: (1) Appeals and petitions in which judgement has been delivered, but Order in Council has not been made before the 10th October, (2) appeals

entered in the Cause List for Michaela's sitting which begins on the 12th October, (3) petitions which are already lodged and may be lodged before the 10th October, and (4) appeals and petitions on which judgement has been reserved by the Privy Council although the hearing has been completed. In clause 6, all those matters which do not come under clause 4 stand automatically transferred to the Federal Court even though they may be pending before the Privy Council. Clauses 7 and 8 are mere matters of construction.

While curtailing the jurisdiction of Privy Council, it is felt that it is desirable to repeal and amend certain sections of the Government of India Act, 1935 which are necessary as a matter of consequence and which are also necessary to remove some of the anomalies in the Government of India Act with regard to the jurisdiction and powers of the Federal Court. As I have said, clause 3 repeals Sections 208 and 218 of the Government of India Act which deal with the Privy Council and appeals from the Federal Court, and appeals from a court outside India. Both these changes are consequential.

It is proposed to amend Section 205 which deals with the appellate jurisdiction of the Federal Court, and Section 209 which deals with the form of judgement and the drawing up of decrees, 210 which deals with jurisdiction of the Federal Court over other courts and Section 214 which deals with jurisdiction of the Federal Court over courts outside India.

It is proposed, therefore, by these consequential and other necessary amendments to make the jurisdiction of the Federal Court complete and independent. This measure, undoubtedly, is an interim measure, because these powers will last only upto the 26th January 1950 when the Constitution comes into operation. On the 26th January 1950, the powers of the Federal Court will be those that are set out in the Constitution.

Sir, I move.

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### **Clause 2**

**The Honourable Dr. B. R. Ambedkar:** Sir, it is contained in clause 3 if my friend will read it. ' Federal Court ' is provided for in sub-clause (2) of clause 3. That is why the words "(other than the Federal Court)" are there in clause 2.

**Pandit Thakur Das Bhargava:** In this list it is in clause 2 and my amendment applies to it only.

**Mr. President;** You can leave it out for the present.

**The Honourable Dr. B. R. Ambedkar:** I do not accept the amendment. It is quite unnecessary.

**Shri B. Das** (Orissa: General): I beg to move:

" That is sub-clause (1) of Clause 2, the words ' or otherwise ' be deleted."

Sir, it is very humiliating to me...

**The Honourable Dr. B. R. Aberdare:** Sir, I do not think this amendment is very necessary, because the jurisdiction of the Privy Council may be derived also from the prerogative conferred by Statute. Therefore the words ' or otherwise ' are quite necessary. We want to put an end completely to the jurisdiction not merely arising from the prerogative but from other sources also.

**Mr. President:** I will now put the amendments to vote.

*[All amendments were rejected; clause 2 was added to the Bill]*

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### **Clause 3**

**Shri T. T. Krishnamachari** (Madras: General): My friend's remarks can be cut short if I explain there are really no appeals pending before the Privy Council from the Federal Court.

**The Honourable Dr. B. R. Ambedkar:** There is no pending appeal.

**Pandit Thakur Das Bhargava:** I heard from Dr. Ambedkar and Dr. Bakhshi Tek Chand that there is no appeal pending, but there may be other proceedings. My submission is that if there are proceedings whereby remedy is possible to be given the persons concerned should not be deprived of their rights, merely because we are doing away with the jurisdiction of the Privy Council.

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**The Honourable Dr. B. R. Ambedkar:** I do not think it is necessary to accept the amendment moved by my Friend, Pandit Thakur Das Bhargava. As my Friend, Mr. Krishnamachari, has stated, there are really no appeals pending before the Privy Council from the Federal Court, and consequently it is quite unnecessary to make any saving as proposed by my Friend, Pandit Thakur Das Bhargava, because nobody is really adversely affected, there being no pending cases.

With regard to the amendment moved by my Friend, Mr. Naziruddin Ahmad, I cannot understand why we should depart from the principle which has been laid

down that any criminal matter which is lodged before the Privy Council before the appointed day may be heard by them for purposes of admission but they would be returned to the Federal Court for Final disposal. He wants to make a departure from it but I have not been able to see that the reasons he has advanced warrant it. Therefore I cannot accept his amendment.

***[Amendment of Pandit Thakur Das Bhargava was rejected and that of Naziruddin Ahmed was withdrawn. Clause 3 was added to the Bill]***

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#### **Clause 4**

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**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That for sub-clause (b) of clause 4, the following sub-clauses be substituted: —

(b) Any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or

(c) Any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed there from by or under the authority of the Judicial Committee, or',

and sub clause (c) be re-lettered as sub-clause (d)."

What probably requires some explanation is sub-clause (c). Although we have stated in the main clause that business or cases entered upon the calendar for the Michaelmas term may be left with the Privy Council for disposal, it is not quite certain how many of them may remain undisposed of. Therefore, we propose to give permission to the Privy Council at the outset to say that, although a matter or a case is entered upon the cause list for the Michaelmas term, they will not be able to hear some of the matters, so that there may be no balance of pending cases left. In that event, those cases that the Privy Council directs that they will not be able to hear would also become automatically transferred to the Federal Court. It is to provide for that sort of contingency that I am adding this sub-clause (c) in terms of the amendment.

**Pandit Thakur Das Bhargava:** Sir, I move:

" That sub-clause (c) of clause 4 be deleted ".

**...The Honourable Dr. B. R. Ambedkar:** Sir, I do not accept the amendment of Pandit Thakur Das Bhargava.

***[Amendment of Pandit Bhargava was rejected. Dr. Ambedkar's amendment was adopted. Clause 4 was added to the bill]***

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### Clause 5

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**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That in sub-clause (3) of Clause 5, for the brackets, letters and word '(b) or (c) ' the brackets, letters and word ' (b), (c) or (d) ' be substituted."

It is purely consequential.

*[The amendment was adapted and clause 5, was added to the bill]*

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### Clause 7

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**Mr. Naziruddin Ahmad:** Sir, I beg to move:

"That is Clause 7, the comma after the word ' effect ' be deleted."...

**Mr. President:** I do not think this need be put to vote, this question of ' comma '.

**The Honourable Dr. B. R. Ambedkar:** This will be looked into. This need not be put to vote.

*[Clause 7 was added to the Bill]*

### Clause 8

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**The Honourable Dr. B. R. Ambedkar:** I do not accept the amendment.

*[The amendment of Mr. B. Das was negatived. Clause 8 was added to the Bill]*

### Clause 9

**The Honourable Dr. B. R. Ambedkar:** Sir, with your permission, I would like to move the amendment which have been put in a somewhat different form because I thought that the amendments as tabled rather create a confusion. If you will allow me, I have put all these in a consolidated form. There is no

substantial change at all. It is just a matter of form and I thought that the House would be in a better position to get at the idea of what we are doing in clause 9.

**Mr. President:** Yes.

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

For clause 9, the following clause be substituted :—

(Amendments of the Government of India Act, 1935)

"9. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as the said Act), for sub-section (2) the following sub-section shall be substituted, namely-

"(2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question as aforesaid has been wrongly decided and, with the leave of the Federal Court, on any other ground."

2) In section 209 of the said Act, for sub-sections (1) and (2) the following sub-sections shall be substituted, namely :—

(Act V of 1908)

"(1) The Federal Court in the exercise of its appellate jurisdiction may pass . such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India".

I should like to add one or two words to be interpolated, which have been omitted:

" In the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law, in the manner prescribed by rules made by the Federal Court."

" (3) In clause (a) of sub-section (3) of Section 210 of the said Act, for the word, brackets and figure " sub-section (2)", the word, brackets and figure " sub-section (1)" shall be substituted."

"(4) In section 214 of the said Act, after sub-section (1) the following sub-section shall be inserted, namely :—"

I should like to add a few words at the beginning.

(Act V of)

" (IA) Subject to the provisions of the Code of Civil Procedure, 1908, or any law made

by the Dominion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, (1908)

make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced."

The object of clause 9 is to make the Federal Court a complete and independent Court. There were certain limitations under the existing Government of India Act, 1935 which prevented the Federal Court from drawing up its own decrees. It had to send the matter to the Trial Court. All these limitations it is necessary to withdraw because the Federal Court is going to take the place of the Privy Council.

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**The Honourable Dr. B. R. Ambedkar :** That amendment, I submit, is outside the scope of the Bill. The Bill deals merely with the transfer of jurisdiction.

**Pandit Thakur Das Bhargava ;** It is not a question of transfer of jurisdiction. I only give what is contained in clause 5 and am defining what jurisdiction shall be conferred, not leaving it to investigation as to what the prerogative of His Majesty was, I am only making these powers in a concrete form from what it is in the abstract...

**The Honourable Dr. B. R. Ambedkar :** This Bill does not propose to give any direction to the Federal Court as to the manner in which they should exercise the jurisdiction with which they become vested under the present Bill.

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**Clause 11**

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**The Honourable Dr. B. R. Ambedkar:** Sir, I do not accept that amendment, it is quite unnecessary.

*[The amendment of Mr. Naziruddin Ahmad was negatived.]*

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**Clause I**

\* \* \* \* \*

**Mr. President :** Do you wish to say anything about this ?

**The Honourable Dr. B. R. Ambedkar:** The emphasis is on the abolition of the jurisdiction of the Privy Council, and obviously that emphasis could not be



realised if the words " abolition of jurisdiction " were put in brackets.

**Mr. President : Do** you wish to say anything about the 7th amendment ?

**The Honourable Dr. B. R. Ambedkar :** Sir, the acceding States were never subject to the jurisdiction of the Privy Council. But as a measure of extreme caution, it will be seen that in sub-clause (2) (he words used are " within the territory of India ". Therefore, it is unnecessary to make any mention of the acceding States.

**Mr. President :** I shall now put the amendments to vote.

*[All amendments were rejected. Clause I was added to the Bill.]*

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**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That the Bill, as amended, be passed ".

*{The motion was adopted.}*

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### ARTICLE 303— (contd.)

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**The Honourable Dr. B. R. Ambedkar:** I move :

" That after sub-clause (1) of clause (1) of article 303, the following sub-clauses be inserted, namely :-

(II) " High Court " means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(i) any court in the territory of India constituted or re-constituted under this Constitution as a High Court and

(ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III) " Indian State " means—

(i) as respects the period before the commencement of this Constitution, any territory which the Government of the dominion of India recognised as such a State; and

(ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State.' "

**Mr. President :** There is no amendment to this. As no one wishes to speak on this I will put it to vote.

*[The motion was adopted]*

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**The Honourable Dr. B. R. Ambedkar :** I beg to move :

" That after sub-clause (n) of clause (i) of article 303, the following subclause be inserted, namely :—

'(nn) 'Ruler ' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the time being is recognised by the President as the Ruler of the State and includes any person for the time being recognised by the President as exercising the powers of the Ruler of the State, and in relation to an Indian State means the Prime. Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State"

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**Mr. President:** There is no amendment to this. I will put it to vote.

*[The amendment was adopted.]*

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

"That with reference to amendment No. 147 of List IV (Eighth Week), for sub-clause (w) of clause (1) of article 303, the following sub-clause be substituted:—

' (w) ' Scheduled Castes ' means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 300A of this Constitution to be Scheduled Castes for the purposes of this Constitution.' "

The only change is, the word ' specified ' has been changed to ' deemed ' ,

Sir, I move:

" That with reference to amendment No. 148 of list IV (Eighth Week), for sub-clause (x) of clause (1) of article 303, the following sub-clause be substituted :—

' (x) ' Scheduled tribes ' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 300B of this Constitution to be scheduled tribes for the purposes of this Constitution,"

I am incorporating the other amendment which has also been tabled. Shall we take up, the two other articles also at the same time ?

**Mr. President:** Yes.

## NEW ARTICLE 300A AND 300B

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That after article 300, the following articles be inserted:—

(Scheduled Castes)

300A. (1) The President may, after consultation with the Governor or Ruler of a state public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes, which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued by the President under clause (1) of this article any caste, race or tribe or part of or group within any caste, race or tribe, but save *an* aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Scheduled Tribes

300B. (1) The President may after consultation with the Governor or Ruler of a State, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for purposes of this Constitution be deemed to be scheduled tribes in relation to that State.

(2) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification issued by the President under clause (1) of this article any Tribe or Tribal community or part of or group within any Tribe or Tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The object of these two articles, as I stated, was to eliminate the neccessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have the power to issue a general notification in the Gazette specifying all the Castes and Tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this: that once a notification has been issued by the President, which, undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President.

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**Mr. President:** Does anyone else wish to speak ? Do you wish to say anything Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar:** I do not accept the amendment of Pandit Thakur Das Bhargava.

**Mr. President:** Then I put the amendments

*[Both the above amendments of Dr. Ambedkar were adopted. Following amendment of Pandit Bhargava was negated.]*

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" That in amendment No. 201 of list V (Eighth Week), in clause (2) of the proposed new article 300A, the following be added at the end :— ' for a period of ten years from the commencement of this Constitution.'

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**Mr. President :** Then I put Mr. Krishnamachari's amendment which has really been accepted by Dr. Ambedkar—218A. The question is:

"That in amendment No. 201 of List V (Eighth Week), in the proposed new article 300B—

(a) in clause (1), for the word ' communities ' in the two places where it occurs, the words ' tribal communities ' be substituted;

(b) in clause (2) for the word ' community ', in the two places where it occurs, the words ' tribal community ' be substituted." (The amendment was adopted.)

**Mr. President:** Then I put article 300B as proposed by Dr. Ambedkar.

(Article 300B was adopted and added to the Constitution)

## EIGHTH SCHEDULE

**The Honourable Dr. B. R. Ambedkar:** Sir, I move:

" That the Eighth Schedule be deleted."

**Mr. President :** There are certain amendments to the Eighth Schedule. They would not arise now.

**The Honourable Dr. B. R. Ambedkar :** No. Sir, they would not arise.

(Schedule Eight was deleted from the Constitution).

## ARTICLE 303— (contd.)

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**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in clause (2) of article 303, the following words be added at the end :—

' as it applies for the interpretation of an Act of the Legislature of the Dominion of India.' "

The reference is to the General Clauses Act.

**Shri Jaspal Roy Kapoor :** I wonder whether there is any real necessity for making this. Even if it is, I do not know how far it would be correct if you have it like this " as it applies for the interpretation of an Act of the Legislature of the Dominion of India ". Because, hereafter when the Constitution has come into force, there shall be no law which has been made by ' the Legislature of the Dominion of India '. The Dominion of India will cease then and all the Acts in force within the ; Dominion of India will automatically become Acts of the Union.

**The Honourable Dr. B. R. Ambedkar:** The point is this that the I General Clauses Act applies to Acts, Regulations and Ordinances. It is therefore necessary to say to which class of these laws this will apply. That is the reason why this amendment is proposed.

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**Shri Jaspal Roy Kapoor :** What I mean to submit is that after the Constitution comes into force there shall be no law in existence which could be said to be a law of the ' Dominion of India '. So I think our purpose would be fully served if we say " as it applies for the interpretation of any existing Act."

**The Honourable Dr. B. R. Ambedkar:** I am afraid you have not examined the General Clauses Act.

**Shri Jaspal Roy Kapoor :** It is no use introducing some provision without carefully scrutinising it

**The Honourable Dr. B. R. Ambedkar :** It had better be left to the draftsmen as to what is necessary and what is not.

**Shri Jaspal Roy Kapoor:** I agree that any necessary corrections should be left to the Drafting Committee. But there is no harm in submitting a mistake if it is a mistake.

**The Honourable Dr. B. R. Ambedkar :** I refuse to accept, it is a mistake.

**Shri Jaspal Roy Kapoor :** I know it is not easy to convince you.

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**The Honourable Dr. B. R. Ambedkar:** Sir, I have said what I had to say and after having seen the General Clauses Act right here, I am quite convinced that the amendment I have moved is a very necessary amendment.

**Mr. President :** The question is :

" That in clause (2) of article 303, the following words be added at the end :—

' as it applies for the interpretation of an Act of the Legislature of the Dominion of India.' "

(The amendment was adopted)

**Mr. President :** Then clause (3). There is amendment No. 156.

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That in clause (3) of article 303—

(i) after the word and figure ' Part I ' the words and figures ' or Part III ' be inserted.

(ii) for the words ' as the case may be, to an Ordinance made by a Governor ' the words ' to an Ordinance made by a Governor or Ruler, as the case may be ' be substituted."

It is purely consequential.

The amendment was adopted.

**[Article 303, as amended, was added to the Constitution.]**

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## ARTICLE 304

**The Honourable Dr. B. R. Ambedkar :** Sir, I move

"That for article 304, the following be substituted:—

(Procedure for amendment of the Constitution)

' 304. An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in—

(a) any of the Lists in the Seventh Schedule, or

(b) the representation of States in Parliament, or

(c) Chapter IV of Part V, Chapter VII of Part VI, and article 213A of this Constitution, the amendment shall also require to be ratified by the Legislatures of not less than one half of the States for the time being specified in Parts I and III of the First Schedule.' "

I will move my other amendment also. No. 207. I move :

"That in amendment No. 118 of List III (English Week), for the proviso to the proposed article 304 the following proviso be substituted:—'

Provided that if such amendment seeks to make any change in—

(a) article 43, article 44, article 60, article 142 or article 213A of this Constitution, or

(b) Chapter IV of Part V, Chapter VII of Part VI, or Chapter I of Part IX of this Constitution, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.' "

Sir, I do not wish to say anything at this stage because I anticipate that there would be considerable debate on this article and I propose to reserve my remarks towards the end so that I may be in a position to explain the points that might be raised against this amendment.

**Mr. Naziruddin Ahmad:** It is far better to give the arguments in advance to avoid any unnecessary debate.

**The Honourable Dr. B. R. Ambedkar:** If my friend will guarantee to me that he will not take time, I will do it, but I know my friend will have his cake and eat it too.

**Mr. Naziruddin Ahmad :** Sir, Dr. Ambedkar will give no argument at the beginning, saying that he will await arguments and speak in reply. But in the end on hearing arguments, he will merely say " I oppose the amendments and reject the arguments"!

**Mr. President:** We shall take up the amendments. No. 119.

**Shri T. T. Krishnamachari:** Sir, I am not moving amendment No. 119 because it is incorporated in Dr. Ambedkar's amendment. It is covered by No. 207.

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**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, of the many

amendments that have been made and the speeches made thereon, it is not possible for me to pursue every amendment and to pursue every speaker. But I am going to take as a general alternative suggested by the various speakers that our Constitution should be made open for amendment by the future Parliament either by a simple majority or by a method which is much more facile than that embodied in article 304.

Sir, before I proceed to explain the provisions contained in article 304, I should like to remind the House of the provisions which are contained in other constitutions on the question of amending the Constitution. I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution. Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and the power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution. It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; nonetheless the Canadian people have not thought fit to employ to powers that have been given to them to introduce a clause relating to the amendment of the Constitution.

I come to the Irish Constitution. In the Irish Constitution there is a provision that both Houses by a simple majority may alter, or repeal any part of the Irish Constitution provided that the decision of the Houses to amend, repeal or alter the Constitution is submitted to the people in a referendum and approved by the people by a majority.

Then let us take the Swiss Constitution. In that constitution too, the legislature may pass an amending Bill, but that amendment does not have any operative force unless two conditions are satisfied: one is that the majority of the cantons accept the amendment, and secondly—there is a referendum also—in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect so far as changing the Constitution is concerned.

Let me now take the Australian Constitution. In that Constitution the provision is this : That the amendment must be passed by an absolute majority of the Australian Parliament. Then, after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives to the Lower House of the Australian Parliament. Then again it has to be submitted to



areferendum of the people or the electors. A further condition is this : that it must be accepted by a majority of the States and also by a majority of the electors.

In the United Constitution the provision is that an amendment must be accepted by two-thirds majority of both Houses subject to the fact that the decision of both Houses by two-thirds majority must be ratified by the decision of two-thirds majority of the States in favour of the amendment. I cite these facts in order to point out that in no country to which I have made reference it is provided that the Constitution should be amended by a simple majority

Now let me turn to the provision of our Constitution. What is it that we propose to do with regard to amendment of our Constitution ? We propose to divide the various articles of the Constitution into three categories. In one category, we have placed certain articles which would be open to amendment by Parliament by a simple majority. That fact unfortunately has not been noticed by reason of the fact that mention of this matter has not been made in article 304, but in different other articles of the Constitution. Let me refer to some of them. Take for instance articles 2 and 3 which deal with the States. So far as the creation of new States in concerned or the re-constitution of existing States is concerned, this is a matter which can be done by Parliament by a simple majority. Similarly, take for example article 148-A which deals with the Upper Chambers in the provinces. Parliament has been given perfect freedom to either abolish the Upper Chamber or to create new Second Chambers in provinces which do not now have them by a simple majority. Now take article 213 which deals with the States in Part II. With regard to the constitution of the States, the draft Constitution also leaves the making of constitution of States in Part II and their modification to Parliament to be decided by a simple majority.

Again take Schedule V and VI. They are also left to be amended by Parliament by a simple majority. I can cite innumerable articles in the Constitution, such as article 255, which deals with grants and financial provisions which leave the matter subject to law made by Parliament. The provisions are ' until Parliament otherwise provides '. Therefore in many matters—I have not had time to examine the whole of the draft Constitution and so I am only just illustrating my point—we have left things in our Constitution in a way which is capable of being amended by a simple majority. If my friends who have been persisting in the criticism that Parliament should have more extensive powers of amending or altering the Constitution by a simple majority had suggested to me a concrete case and referred to any definite article that that should also be put in that category, it would have been open to the Drafting Committee to consider the matter. Instead of that, to say that the whole of the Constitution should be left liable to be amended by Parliament by majority is, in my judgement, too

extravagant and too tall an order to be accepted by people responsible for drafting the Constitution.

Therefore, the first point which I wanted to emphasise was that it is absolutely a misconception to say that there is no article in the constitution which could not be amended by Parliament by a simple majority. As I said, we have any number of articles in our Constitution which it would be open for Parliament to amend by a bare majority.

Now, what is it we do? We divide the articles of the Constitution under three categories. The first category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two-thirds majority. Then they can amend it.

**Mr. President** : Of Members present.

**The Honourable Dr. B. R. Ambedkar** : Yes. Now, we have no doubt put certain articles in a third category where for the purposes of amendment the mechanism is somewhat different or double. It requires two-thirds majority plus ratification by the States. I shall explain why we think that in the case of certain articles it is desirable to adopt this procedure.-If Members of the House who are interested in this matter are to examine the articles that have been put under the proviso, they will find that they refer not merely to the Centre but to the relations between the Centre and the Provinces. We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered. We have by our laws given certain rights to provinces, and reserved certain rights to the Centre. We have distributed legislative authority; we have distributed executive authority and we have distributed administrative authority. Obviously to say that even those articles of the Constitution which pertain to the administrative, legislative, financial and other powers, such as the executive powers of the provinces should be made liable to alteration by the Central Parliament by two-thirds majority, without permitting the provinces or the States to have any voice, is in my judgement altogether nullifying the fundamentals of the Constitution. If my honourable Friends were to refer to the articles which are included in the proviso they will see that we have selected very few. Article 43 deals with the election of the President; article 44 deals with the manner of election of the President. It was the view of the Drafting Committee that the President, while no doubt in charge of the affairs of the Centre, none the less was the head of the Union, and

as such, the provinces were as much interested in his election and in the manner of his election as the Centre. Consequently we thought that this was a proper matter to be included in that category of articles which would require ratification by the provinces.

Take article 60 and article 142. Article 60 deals with the extent of the executive authority of the Union and article 142 deals with the extent of the executive authority of the State. We have laid down in our Constitution the fundamental proposition that executive authority shall be co-extensive with legislative authority. Supposing, for instance, the Parliament has the power to make an alteration in article 60 for extending the executive authority beyond the provisions or the limit contained in article 60, it would undoubtedly undermine or limit the executive authority of the States as defined in article 142 and we therefore thought that that also was a fundamental matter and ought to require the ratifications of the States.

Chapter IV, Part V, deals with the Supreme Court. There can be no doubt about it that the Supreme Court is a court in which both the Centre and the provinces or the units and every citizen of this country are interested, and it was therefore a matter which ought not to be left to be decided merely by a two-thirds majority. The same about the High Courts, mentioned in Chapter VII of Part VI.

Chapter I of Part IX which is included in the third category, deals with the distribution of legislative power, and (a) deals with the lists of the Seventh Schedule. Nobody can deny that the provinces have a fundamental interest in this matter and that they should not be altered without their consent. Similarly the representation of the States in the Council of States which is dealt with in article 67.

I think honourable Members will see that the principles adopted by the Drafting Committee are unquestionable, except in the sight of those who think that the Constitution should be liable, should be open to be amended every article of that—by a simple majority. As I said, I am not prepared to accept that position. The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature maybe free to frame any law; the executive may be free to take any decision; and the Supreme Court may be free

to give any interpretation of the law. It would result in utter chaos. Sir I have not been able to understand when it is said that the Constitution must be made open to amendment by a bare majority. I can, applying my mind to this particular feeling, conceive of only three reasons. One is that the Drafting Committee has prepared a draft which from the drafting point of view is very bad. I can quite understand that position. If that is the thing....

**Shri Mahavir Tyagi** : It is not so.

**The Honourable Dr. B. R. Ambedkar** : It may not be so. If it is so, I as Chairman of the Drafting Committee and I think my other colleagues of the Drafting Committee would not at all object if this Constituent Assembly were to appoint another Drafting Committee or to import a Parliamentary draftsman submit this draft to him and ask him to suggest and find out what defects there are. That would be an honest procedure and I have no objection to it at all.

If that is not the ground on which the argument rests, then the other ground is that this Constitution proceeds on some wrong principles. Sir, so far as this matter is concerned, it seems to me that a modern constitution can proceed only on two bases: One base is to have a parliamentary system of government. The other base is to have a totalitarian or dictatorial form of government. If we agree that our Constitution must not be a dictatorship but must be a Constitution in which there is parliamentary democracy where government is all the time on the anvil, so to say, on its trial, responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this Constitution are as good as, if not better than, the principles embodied in any other parliamentary constitution.

The other argument which perhaps might have been urged—1 was not able to hear every Member who spoke—is that this Assembly is not a representative assembly as it has not been elected on adult suffrage, that the large mass of the people are not represented in this Constitution. Consequently this Assembly in framing the Constitution has no right to say that this Constitution should have the finality which article 304 proposes to give it. Sir, it may be true that this Assembly is not a representative assembly in the sense that Members of this Assembly have not been elected on the basis of adult suffrage. I am prepared to accept that argument, but the further inference which is being drawn that if the Assembly had been elected on the basis of adult suffrage, it was then bound to possess greater wisdom and greater political knowledge is an inference which I utterly repudiate.

**Mr. Naziruddin Ahmad**: It would have been worse!

**The Honourable Dr. B. R. Ambedkar** : It might easily have been worse, says my Friend Mr. Naziruddin Ahmad, and I agree with him. Power and knowledge

do not go together. Often times they are dissociated, and I am quite frank enough to say that this House, such as it is, has probably a greater modicum and quantum of knowledge and information than the future Parliament is likely to have. I therefore submit, Sir, that the article as proposed by the Drafting Committee is the best that could be conceived in the circumstances of the case.

Mr. President : I shall now put the amendments to vote.

*[The amendments were negatived and those of Dr. Ambedkar, as mentioned earlier were adopted. Article 304, as amended, was added to the Constitution.]*

\* \* \* \* \*

**Shri Brajeshwar Prasad** : Sir, now the time is seven o'clock.

**Seth Govind Das** : There *is* so much still to be done that I do not think that we shall be able to finish it. So, I propose that either we should sit at nine o'clock tonight and go on till twelve o'clock or we may sit tomorrow morning.

**The Honourable Dr. B. R. Ambedkar**: We have got only three articles.

**Shri T. T. Krishnamachari** ; We have only three articles, two of which are of a formal nature.

**Mr. President** : I think it would be very inconvenient to adjourn now and come back again to the House. So we have to sit until we finish or we have to sit tomorrow.

**The Honourable Dr. B. R. Ambedkar** : We have got two or three articles and I am sure they are non-contentious and it would not take even half an hour.

**Seth Govind Das** : I do not think we can finish in one hour. There is the question of the name of the country in article I to be settled. I do not think we shall be able to finish all these.

**Mr. President** : The majority of the House seems to think that we shall continue. Am I correct ?

**Many Honourable Members** : Yes, Sir.

**The Honourable Dr. B. R. Ambedkar** : We can finish the thing.

**Mr. Naziruddin Ahmed** : It cannot be done. There is article I and unless the sweets are arranged by Dr. Ambedkar, the nmakaranam ceremony cannot be done today.

## ARTICLE 99

**Mr. President** : Then we shall take articles 99 and 184.

**The Honourable Dr. B. R. Ambedkar :** Sir, I move.

" That for article 99, the following article be substituted :—

(Language to be used in Parliament)

' 99. (1) Notwithstanding anything contained in Part XIVA of this constitution but

subject to the provisions of article 301-F there of business in Parliament shall be translated in Hindi or in English.

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in the mother tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words ' or in English ' were omitted therefrom. ' "

May I move the other one also. This is an analogous thing.

**Mr. President :** I suppose the argument will be the same in respect of both.

**The Honourable Dr. B. R. Ambedkar :** They are substantially the same.

**Mr. President :** I shall put them separately to vote.

**The Honourable Dr. B. R. Ambedkar :** We can have one discussion. So far as the discussion is concerned, the argument will be more or less the same. Sir, I move :

' That for article 184, the following article be substituted :— '

(Language to be used in the Legislatures of States)

184. (1) Notwithstanding anything contained in Part XIVA of this Constitution but

subject to the provisions of article 301-F thereof, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English.

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother tongue.

(2) Unless the Legislature of the State otherwise provides, this article shall, after the expiration

of a period of fifteen years from the commencement of this Constitution, have effect as if the words ' or in English ' were omitted therefrom'." Sir, I think no observations are necessary. The articles are very clear in themselves.

\* \* \* \* \*

**Mr. Nazaruddin Ahmad** : ...If you do not allow the regional languages also to develop, their contribution towards the development of the official language will be very small.

**Mr. President** : Is that not given in the amendment as proposed now ?

**Mr. Naziruddin Ahmad**: I shall ask the Drafting Committee to consider that. This is only a suggestion; it should fit in somehow. I know this is only a pious sentiment on my part because it is not going to be accepted.

**Pandit Lakshmi Kanta Maitra** : Are you going to allow discussion on the language question ? The whole language question is coming before the House.

**The Honourable Dr. B. R. Ambedkar** : No, No. The whole question has been discussed and decided.

*[Amendments of Dr. Ambedkar mentioned above were adopted. Articles 99 and 184, as amended were added to the Constitution.]*

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## ARTICLE I

**Mr. President** : There is one more article, article 1.

**The Honourable Dr. B. R. Ambedkar**: Sir, I propose to move amendment No. 130 and incorporate in it my amendment No. 197 which makes a little verbal change in sub-clause (2).

Sir, I move:

" That for clauses (1) and (2) of article I, the following clauses be substituted :—

" (1) India, that is, Bharat shall be a Union of States.

(2) The States and the territories thereof shall be the States and their territories for the time being specified in Parts I, II and III of the First Schedule.' "

\* \* \* \* \*

**Mr. President** : If I adjourn at all, it will be for the next session. It will be best to adjourn till the next session.

**The Honourable Dr. B. R. Ambedkar** ; Sir, this can be finished in a short

time.

**Mr. President:** What can we do? It is open to any Member to obstruct. Eighty six Members are present and under our rules one-third of the total number of Members should constitute the quorum, and that is about 97. So now, there is no quorum. I have to adjourn the House, there is no help.

**An Honourable Member :** Let this article go to the next session.

**Another Honourable Member :** We can meet to-morrow.

**Another Honourable Member :** There is no guarantee of quorum even tomorrow.

**The Honourable Dr. B. R. Ambedkar :** We can bring some Members who may be outside. The bell may be rung.

\* \* \* \* \*

**Shri H. V. Kamath :** ...Some ascribe it (name of Bharat) to the son of Dushyant and Shakuntala who was also known as " Sarvadamana " or all conqueror and who established his suzerainty and kingdom in this ancient land. After him this land came to be known as Bharat. Another school of research scholars hold that Bharat dates back to Vedic....

**The Honourable Dr. B. R. Ambedkar (Bombay: General):** Is it necessary to trace all this ? I do not understand the purpose of it. It may be well interesting in some other place. My friend accepts the word " Bharat ". The only thing is that he has got an alternative. I am very sorry but there ought to be some sense of proportion, in view of the limited time before the House.

**Shri H. V. Kamath:** I hope it is not for Dr. Ambedkar to regulate the business of the House. **Mr. President:** What amendment are you moving ?

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**Mr. President:** You can move one. I permitted you to move both of them, but I find that the two amendments are contradictory.

**Shri H. V. Kamath:** Are they contradictory. Sir ? If you say they are contradictory, I have nothing to say.

**Mr. President:** Yes, if one is accepted, the other is ruled out.

**Shri H. V. Kamath:** My object is that if one is not accepted, the other may be accepted.

**The Honourable Dr. B. R. Ambedkar:** Why all this eloquence over it ?

**Shri Shankarrao Deo (Bombay: General):** There should be no arguing with



the Chair.

**Shri H. V. Kamath:** I know the rules, Mr. Shankarrao Deo.

**Mr. President:** You can move one.

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**The Honourable Dr. B. R. Ambedkar:** It is proposed to alter the clause in article 3 dealing with the reorganisation of the provinces and States. States in both Parts I and III will be brought on the same level. There is an amendment to the article and that difference is going to be eliminated and it will disappear.

**Shri B. M. Gupte:** That is alright but as I was saying I am not against making the Centre strong. But at the same time we have given a glorified name to the units. We are taking away the powers of the States and bringing them in the Central or Concurrent list; and yet we have adopted the word State for the unit....

\* \* \* \* \*

**The Honourable Dr. B. R. Ambedkar:** Sir, this matter was debated at great length last time. When this article came before the House, it was kept back practically at the end of a very long debate because at that time it was not possible to come to a decision as to whether the word " Bharat " should be used after the word " India " or some other word, but the whole of the article including the term " Union "—if I remember correctly— was debated at great length. We are merely now discussing whether the word " Bharat" should come after " India ". The rest of the substantive part of the article has been debated at great length.

**Shri B. M. Gupte:** I do not say that we should go back upon what we have done. I am merely pointing out the implications and the result of all this....

**Shri Kamalapati Tripathi:** ...When we pronounce this word (Bharat) we are reminded of Shankaracharya, who gave a new vision to the world. When we pronounce this word, we are reminded of the mighty arms of Bhagwan Rama which by twanging the chord of the bow sent echoes through the Himalayas, the seas around this land and the heavens. When we pronounce this word, we are reminded of the wheel of Lord Krishna which destroyed the terrible Imperialism of Kshatriyas from India and relieved this land of its burden.  
;

**The Honourable Dr. B. R. Ambedkar:** Is this all necessary, Sir?

**Shri Kamalapati Tripathi:** I am just telling you to hear relevant things, Sir.

**The Honourable Dr. B. R. Ambedkar:** There is a lot of work to be done.

**Shri Kamalapati Tripathi:** When we pronounce this word we are reminded of Bapu who gave a new message to humanity.

We are pleased to see that this word has been used and we congratulate Dr. Ambedkar on it. It would have been very proper, if he had accepted the amendment' moved by Shri Kamath, which states "Bharat as is known in English language 'India"... etc.

### ARTICLE 306

**Mr. President :** We shall now proceed with the consideration of the articles relating to transitory provisions. Article 306.

**The Honourable Dr. B. R. Ambedkar (Bombay : General) :** Sir, I Move:

" That for clauses (a), (b) and (c) of article 306, the following clauses be substituted:—

" (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or *Kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), coal (including coke and derivatives of coal), iron steel and mica ;

(b) offences against laws with respect to any of the matters mentioned in clause

(a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court.' "

The only changes which the amendment seeks to make in the original article 306 are these. From sub-clause (a), it is now proposed to omit petroleum and petroleum products and mechanically propelled vehicles. The reason why petroleum and petroleum products are sought to be omitted from sub-clause (a) is because that item is now included in List I of the Seventh Schedule. Mechanically propelled vehicles are omitted because they are at present de-controlled and they are placed in the Concurrent List. If the Centre wishes to legislate, it can legislate. Sub clause (b) of the original article, relief and rehabilitation of displaced persons, is no longer necessary because that is also put in the Concurrent List. In regard to sub-clause (c). Inquiries and Statistics is also included in the Concurrent List and therefore this is also omitted. It is only a consequential thing. These are all the changes which this amendment seeks to make in the original article 306.

**Mr. President :** May I enquire of Dr. Ambedkar ? My impression is that cattle fodder including oil cakes and other concentrates was one of the things, adequate control over which was at one time felt necessary. The Government of India Act was sought to be amended; but it would not be amended at the time and considerable difficulty was being felt. I do not know whether you have

considered that.

**The Honourable Dr. B. R. Ambedkar** : This article was re-drafted in consultation with the Industry and Supply Department. We have put in these matters which they thought were necessary to be controlled by the Centre, for a period of five years. If the House thinks that any particular addition may be made to the items included in sub-clause (a), I certainly have no objection.

**Mr. President** : I speak from my experience which is now rather out of date.

**The Honourable Dr. B. R. Ambedkar** : I think it is rather desirable to include that item.

**Dr. P. S. Deshmukh** (C.P. & Berar : General) : That may be done in consultation with the Agriculture Department.

**Mr. President** : That is what I suggest.

**The Honourable Dr. B. R. Ambedkar** : I think we shall add that. I can put in, foodstuffs including cattle fodder.

**Mr. President**: Cattle fodder including oil cakes and other concentrates.

\* \* \* \* \*

**Mr. President** : Does anyone else wish to speak ? Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar** : Sir, I have only to say this much. I am not able to accept the amendment moved by Shri Brajeshwar Prasad. With regard to the other amendment suggested by yourself and by my Friend Dr. Kunzru, I may say that I have an open mind and I am prepared to introduce the necessary amendments after consultation with the Ministry of Industry and Supply. Therefore my amendment may be put through now.

**Mr. President** : And the Ministry of Agriculture also. You may consult that Ministry also."

**The Honourable Dr. B. R. Ambedkar** : Yes, Sir, I will consult the Ministries concerned.

**Mr. President** : Subject to what Dr. Ambedkar has said, I will put the article to vote. I take up the amendments first. Amendment No. 2 of Dr. Deshmukh is more or less verbal and he may leave it to the Drafting Committee also No. 3. What about No. 4 ?

**Dr. P. S. Deshmukh** : I am not moving it.

\* \* \* \* \*

*[Amendment of Dr. Ambedkar was adopted. Article 306, as amended was added to the*

*constitution.]*

\* \* \* \* \*

### ARTICLE 309

**Mr. President** : Then we take up article 309.

**The Honourable Dr. B. R. Ambedkar** : There is an amendment by Shri Brajeshwar Prasad adding a new article 307 A.

**Mr. President** : But shall we take it up now ?

**The Honourable Dr. B. R. Ambedkar** : It may be kept back.

\* \* \* \* \*

*[Article 309 was adopted and added to the Constitution]*

### ARTICLES 310-A AND 310-B

**Shri T. T. Krishnamachari** : The next article *viz.*, 310 is linked to article 308. These two may be considered together.

**Mr. President** : Consideration of article 310 is postponed. Then the House will take up consideration of the next articles 310-A and 310-B.

**The Honourable Dr. B. R. Ambedkar** : Sir, with your permission I move amendment No. 12 in a slightly amended form, thus :

" That after article 310, the following new articles be inserted :—

(Provisions as to Comptroller & Auditor-General of India.)

' 310 A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he Provisions as to Comptroller and has elected otherwise, become on that date the Comptroller auditor general of India' and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office a.; determined under the provisions (?) which were applicable immediately

before such commencement '.

(Provisions as to Public Service Commission)

310 B, (i) The members of the Public Service Commission for the Dominion of India holding Office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members."

Sir, these articles merely provide for the continuance of certain incumbents of the posts which are regulated by the Constitution such as the members of the Public Service Commission and the Auditor-General. There is no matter of principle involved in these articles.

\* \* \* \* \*

**The Honourable Dr. B. R. Ambedkar** : I do not propose to accept the amendment of Dr. Deshmukh. It is unnecessary.

**Mr. President** : I will first put the amendment of Dr. Deshmukh to vote.

The question is:

"That in amendment No. 12 of List I (First Week), in the proposed new article 310-B, after the words ' commencement of this Constitution ' wherever they occur, the words ' whose services have not, for any reason, been terminated ' be inserted. "

The amendment was negatived.

**Mr. President** : I will now put the articles contained in the amendment of Dr. Ambedkar one by one to vote.

*[All amendments of Dr. Ambedkar were carried. Articles 310-A and 310-B were added to the constitution.]*

## ARTICLE 3 II-A

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That after article 311, the following new article be inserted :

(Provisions as to Provisional President)

' 311 A. (1) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the Provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office.

(2) In the event of the occurrence of any vacancy in the office of the Provisional President by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution, and until a person is so elected, the Chief Justice of India shall act as the Provisional President ' . "

**Mr. President** : There are two amendments to this. One is for the deletion of the word " provisional " before the word " President " .

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That in amendment No. 28 of List II (First Week), in clause (1) of the proposed article 311 A the word ' Provisional ' be deleted."

" That in amendment No. 28 of List D (First Week), in clause (2) of the proposed article 311 A, for the words ' provisional President ' in the first place where they occur, the words ' President so elected by the Constituent Assembly of the Dominion of India ' , be substituted."

" That in amendment No. 28 of List II (First Week), in clause (2) of the proposed article 311 A, for the words ' the provisional President ' in the second place where they occur, the word ' President ' be substituted. "

**Dr. P. S. Deshmukh** : Since the principle underlying my amendment has been accepted, I do not see any reason for moving my amendment.

**Mr. President** : The article and the amendments are now open to discussion.

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**Prof. Shibban Lal Saksena** : Mr. President, Sir, ...I hope Dr. Ambedkar will see the reasonableness of this suggestion and will omit the word " provisional " before the word " Parliament " , as he has done in the case of the President.

**The Honourable Dr. B. R. Ambedkar:** I do not think there can be any great objection to the retention of the words " provisional Parliament ". I do not propose to make any change in that. It would not be called the " Provisional Parliament " but for purposes of the language of this article I think it is necessary to say that it is the Provisional Parliament.

**Shri R. K. Sidhva:** But I thought that Dr. Ambedkar has agreed to omit the word " Provisional ".

**Mr. President:** No, this is with reference to the Parliament. Mr. Shibhan Lal Saksena wanted that the word " Provisional " should be omitted before the word " Parliament ",

**Dr.P.S.Deshmukh:** If that is so I would like to move my amendment for the deletion of the word " Provisional " in the other place also. Mr. President : Does your amendment refer to Parliament also ?

**Dr. P. S. Deshmukh :** Yes, Sir.

**Mr. President :** Mr. Shibhan Lal Saksena has moved it. That will be put to the vote. I will now put the various amendments to vote. The question is:

" That ill amendment No. 23 of List D (First Week), in clause (/) of the propped article 3 II-A the word ' provisional ' be deleted."

The amendment was adopted.

**The Honourable Shri K. Santhanam** (Madras : General) : Does it mean the word " Provisional " will be deleted before the word " Parliament " also ?

**Mr. President :** No ; that comes later on.

The question is—

" That in amendment No. 28 of List II(First Week), in clause (2) of the proposed article 3 II-A, for the words 'provisional President ' in the fast place where they occur, the words ' President so elected by the Constituent Assembly of the Dominion of India ' be substituted."

The amendment was adopted.

**Mr. President :** The question is :

" That in amendment No. 28 of List D (First Week), in clause (2) of the proposed article 3 II-A, for the words ' the provisional President ' in the second place where they occur, the word ' President ' be substituted."

The amendment was adopted.

**Mr. President :** Then I take up the amendment which was sought to be moved by Dr. Deshmukh but which was actually moved by Mr. Shibban Lal

Saksena.

The question is:

" That in clause (2) of the proposed new article 311-A, the word ' provisional ' occurring before the word ' Parliament ' be deleted."

The amendment was negatived.

(Article 3 II-A, as amended, was added to the Constitution.)

## ARTICLE 311-B

**The Honourable Dr. B. R. Ambedkar : Sir, I move :**

" That after article 3 II-A the following new article be inserted :

(Council of Ministers of the Provisional President)

' 311-B. Such persons as the provisional President may appoint in this behalf shall become members of the Council of Ministers of the provisional President under this Constitution, and until appointments are made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of the Constitution shall become and shall continue to hold office as members of the Council of Ministers of the Provisional President under the Constitution."

**Dr. P. S. Deshmukh : Sir ,1** thank you for giving me this opportunity of moving this amendment of mine. I move :

" That ill amendment No. 13 above, in the proposed new article 311-B, the word ' provisional ' wherever it occurs, be deleted."

May I add that since the Honourable Dr. Ambedkar has accepted the sense behind this amendment I do not wish to take up the time of the House any more. It becomes more or less a consequential amendment.

(Amendment No. 15 was not moved.)

**Mr. President :** I take it that Dr. Ambedkar accepts the amendment.

**The Honourable Dr. B. R. Ambedkar :** Yes, Sir, I do.

\* \* \* \* \*

**The Honourable Dr. B. R. Ambedkar:** Mr. President, Sir, this article 311-B is merely a formal article permitting the President, so to say, to carry over the Ministry that may be existing immediately before the commencement of the Constitution. This article is analogous to the other article which we have already



passed, relating to members of the Public Service Commission and to the Auditor-General. Consequently there is really no fundamental difference between those articles and this article. If those who have commented upon the provisions of this article 311-B contend that no Ministry ought to be appointed or function on the 26th of January, 1950, unless that Ministry has the confidence of the Parliament, I am quite prepared to accept that contention. But I do not quite understand how this article makes it impossible either for the Parliament or for the Ministry to obtain what might be called a vote of confidence. If the members of Parliament do not think that the existing Ministry is competent enough to discharge the functions which it has to perform, it is open to this House before the 26th of January to pass a vote of no confidence in the Ministry and thereby dismiss the Ministry. It would be equally open to the Prime Minister, before submitting the names of the members of the Cabinet to the provisional President, to obtain also a positive vote of confidence in himself and his Ministry from the House. If neither the Prime Minister nor the House desires to apply the test of no confidence or confidence before the 26th of January, 1950—assuming that to be the date for the operation of the Constitution—this article 311 -B does not take away the power from the House after the 26th of January to table a no-confidence motion and to dismiss that Ministry. Nor is the Prime Minister prevented by this article from coming forward after the appointment of the Ministry to obtain a positive vote of confidence in himself and the Ministry.

Therefore it seems to me that those who have commented upon the provisions of article 311-B, probably under the impression that this is a surreptitious attempt on the part of the existing Ministry to smuggle themselves, so to say, under the new Constitution, have been labouring under a misapprehension. The doors are perfectly open at present, and even after the 26th of January, for the House to take such action as the House prefers and to dismiss the Ministry if they do not like it. Therefore, this article is merely, as I said, a formal article permitting the carrying over of the existing Ministry into the New Constitution.

**Shri H. V. Karnath** : The Honourable Dr. Ambedkar has not answered the points raised by me. What about the oath of office I referred to ?

**The Honourable Dr. B. R. Ambedkar** : That will be taken undoubtedly. " Appointment " means taking the oath of office. Otherwise there is no appointment.

**Shri H. V. Kamath** : On that very day ?

**The Honourable Dr. B. R. Ambedkar** : Yes, certainly. On that very day. " Appointment " includes oath of office.

**Mr. President:** I shall put Dr. Deshmukh's amendment to vote—1 take it that it has been accepted by the Mover.

*[The amendment was adopted. Article 311-B, as amended, was added to the Constitution.]*

## ARTICLE 312

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That for article 312, the following article be substituted :—

(Provisions as to Provincial Legislature in each State)

' 312. (1) Until the House or Houses of the Legislature of each State for the time being specified in part of the First Schedule has or have been duly constituted and summoned to meet each State for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

(2) Notwithstanding anything contained in clause (1) of this article, where a general election to reconstitute the Legislative Assembly of a Province was ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution has not come into operation and the assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.

(3) Any person holding office as Speaker of the legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of this Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case maybe of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (7) of this article :

Provided that where a general election was ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect a member of the Assembly as the Speaker thereof.' "

The provisions are quite clear and I do not think that they require any explanation.

**Mr. President :** Are there any amendments to this ? I do not see any.

\* \* \* \* \*

**Shri M. Ananthasayanam Ayyangar** : It all depends how long the interim period lasts, if it is a short one, there may not be any need for the dissolution. But what if it is otherwise ? We know every sitting Member will be anxious to continue and every other person who has not had a chance may like to have the House dissolved. I am not casting any aspersions on any particular Member. I only say that in the circumstances I have mentioned, there must be some provision whereby, if necessary, an opportunity can be had of changing the Assembly and going to the electorate.

**The Honourable Dr. B. R. Ambedkar**: Sir, after what has fallen from you, I do not think it is necessary for me to pursue the matter any further. So far as the merits of the amended article are concerned, I do not think anything has been said which calls for a reply.

**Shri H. V. Kamath** : What about the clause concerning the Speaker ?

**The Honourable Dr. B. R. Ambedkar** : That was there in the original draft.

**Mr. President** : I will now put article 312 to vote. The question is :

" That the proposed article 312 stand part of the Constitution."

The motion was adopted.

Article 312 was added to the Constitution.

#### ARTICLES 312-A TO 312-E, 312G AND 312-H

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That after article 312, the following new articles be inserted :-

(Provisions as to provincial Governor of Provinces)

' **312A.** Any person holding office of Governor in any Province immediately before the commencement of this constitution shall after such Governor of commencement be the provisional the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been appointed in accordance with the provisions of chapter II of Part VI of this Constitution and has entered upon his office.

(Council of ministers of provisional Governor)

**312B.** Such persons as the provisional governor of a State may appoint in this behalf shall become members of the council of Ministers of the under this Constitution, and until Governors, appointments are so

made, all persons holding office as Ministers for the corresponding State immediately before the commencement of this constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional Governor of the State under this Constitution.

(Provisions as to provisional Legislatures in States in Part III of the First Schedule)

**312C.** Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

(Council of Ministers for States in Part III of the First Schedule)

**312D.** Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the council of Ministers of such Rajpramukh under this Constitution and until appointments are so made, all persons holding office as Ministers immediately before the commencement of this Constitution in the corresponding Indian State shall become and shall continue to hold office as members of the council of Ministers of such Rajpramukh under this Constitution.

**For article 312E I propose amendment No. 21 :**

" That in amendment No. 16 above, for the proposed new article 3] 2E, the following be substituted :-

" **312E.** For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or any part thereof may, notwithstanding anything contained in this Constitution, be determined in such manner as the President may by order direct.' "

(Provisions as to Bills pending in the dominion Legislature & in the Legislatures of Provinces & Indian States)

" **312G.** A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the legislature of Province or Indian State may, subject to any provision to the contrary, which may be included in rules made by

Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as if the proceedings taken with reference to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State.

(Transactions occurring between the commencement of the constitution & the 31st of March 1950)

**312H.** The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty-first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpr Mukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement"

I do not think there is anything necessary to say by way of explanation of these articles.

There are two amendments Nos. 18 and 19 on the Notice Paper proposing to omit the word 'provisional' in articles 312A and 312B. I propose to accept these amendments in consonance with what we have already done.

**Dr. P. S. Deshmukh ; Mr. President, I move :**

" That in amendment No. 16 above, in the proposed new article 312B, the word 'provisional' , wherever it occurs, be deleted."

" That in amendment No. 16 above, in the proposed new article 312A, the word 'provisional' where it occurs be deleted."

I am glad that the amendments are acceptable to Dr. Ambedkar. My reason for these are that it would be derogatory to the dignity of the President or the Governor to be described as 'provisional'. I commend the amendments for the acceptance of the House.

\* \* \* \* \*

**The Honourable Dr. B. R. Ambedkar** : I cannot accept this amendment. My Friends Mr. Kamat and Prof. Saksena have read a great deal into this article 312-E. As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census figures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the Fixation of seats cannot be based upon the truncated provinces whose population figures have been considerably disturbed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

**Shri H. V. Kamath** : Has Dr. Ambedkar any objection to the principle of my amendment ?

**The Honourable Dr. B. R. Ambedkar** : I do not accept it. The import of this article is very limited. It is the determination of the population, not delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

*[Articles 312-A to 312-E, 312-G and 312-H as proposed by Dr. Ambedkar and as amended by Dr. P. S. Deshmukh's amendment were adopted and added to the Constitution.]*

### ARTICLE 313

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That for article 313, the following be substituted :—  
(Power of the President to remove difficulties.

313. (1) The President may, for the purpose of removing any

difficulties, particularly in relation to the transition *from* the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient :

Provided that no such order shall be made after the First meeting of Parliament duly constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall *be* laid before each House of Parliament. "

This is a reproduction of the provision contained in the Government of India Act, which is necessary for the transition period.

\* \* \* \* \*

**The Honourable Dr. B. R. Ambedkar** : Sir, there seems to be considerable missapprehension as to the necessity of the provisions contained in article 313. My Friend Dr. Deshmukh who has moved his amendment very kindly said that if I gave a satisfactory explanation as to the provisions contained in article 313 he would not press his amendment. With regard to article 313 I think certain facts will be admitted. The first fact which I expect will be admitted on all hands is this. During the transition period there are bound to arise certain difficulties which it is not possible for the Drafting Committee, or for the matter of that any Member of this House, to fully foresee right now and to make any provision. Therefore, It is necessary that there should reside somewhere some power to resolve these unforeseen difficulties.

The question therefore is to what extent and up to what period these powers should be lodged in that particular authority. My friend. Dr. Deshmukh, said that under section 310 of the Government of India Act, the power was to last for six months. I think he is under a mistake. The power was to last for six months after Part III had come into operation. Ours is a very limited provision. The power to resolve difficulties by constitutional provisions vested by articles 313 would automatically come to an end on the day of which the new Parliament under the new provisions comes into existence. We therefore do not propose under this article to allow the President to exercise the powers given to him under 313a day longer than the proper authority entitled to make amendments comes into being. That is one feature of this article 313.

Admitting the fact that difficulties will arise and that they must be resolved and the power must vest with somebody, the question that really arises for consideration is this : whether this power should vest in the President or it

should vest in the provisional Parliament. There cannot be any other alternative. The reason why the Drafting Committee has felt that it would be desirable to adopt the provisions contained in article 313 and vest the power in the President is because the duration of the transitional Parliament is so small and it might be busy with so many other matters requiring Parliamentary legislation that it would not be possible for the Parliament sitting during the transitional period to grapple with a matter which must be immediately solved.

Let me give one or two illustrations of the difficulties that are likely to arise. By our Constitution we have made considerable changes in the powers of taxation of the States and Centre. On the 26th January next, when the Constitution comes into existence, the powers of taxation of the Indian States enjoyed by them under the existing Government of India Act would automatically come to an end. It would create a crisis and therefore this matter should be regularised. If we were to get it regularised by the provisional Parliament, I think my friend would realise that it would take such a long time that the crisis would continue. Therefore, rather than adopt the ordinary Parliamentary procedure of having a Bill read three times, sent to Select Committee, having a consideration motion, circulation and so on, I think it is desirable, for the purpose of saving the Constitution from difficulties, to lodge this power with the President so that he may expeditiously act. Therefore, as I said, on the merits the provision is necessary. Comparing it with the provisions contained in section 310, ours is a much limited proposal, and I submit that having regard to these circumstances there cannot be any serious or fundamental objection to the House accepting article 313.

With regard to the point made by my Friend Mr. Kamat, I think he will realise that there is no error on the part of the Drafting Committee in referring to the Government of India Act, 1935, without making a distinction between the original Statute and the Statute as adapted, because he will see that the Statute as adapted itself provides that its short title shall be, " Government of India Act, 1935 ", and I have no doubt that it is in that sense that it will be understood when this article comes to be interpreted.

**Dr. P. S. Deshmukh** : May I ask a question ? If the Parliament is asked to approve the order passed by the President would there be any harm ?

**The Honourable Dr. B. R. Ambedkar** : But " approval " means what ? It may nullify the action taken by the President, and the object of this provision is to provide an effective remedy. That way it cannot come into force quickly while what we want is that the matter should come into force at once.

**Mr. President** : I shall put the amendments now. Amendment No. 37 moved by Dr. Ambedkar.



The question is:

" That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words ' each House of ' be deleted." The amendment was adopted.

**Dr. P. S. Deshmukh** : Sir, I beg leave to withdraw my amendments Nos. 30, 31 and 32 but not 33.

Amendments Nos. 30, 31 and 32 were, by leave of the Assembly, withdrawn.  
Article 313, as amended, was added to the constitution.

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### ARTICLE 307

**Shri Biswanath Das** : My complaint in this regard is that neither the Law Department nor the office of the Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation. Mr. President : Without knowing what the Constitution is going to be!

**The Honourable Dr. B. R. Ambedkar** : (Bombay : General) : MyFriend is thoroughly misinformed. He does not know what is being done.

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*[Article 307 as amended was added to the Constitution.]*

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### ARTICLE 308

**Mr. President** : We go to article 308. Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That for clause (3) of article 308 the following clause be substituted :—

' (3) Nothing in this Constitution shall operate invalidate the exercise of jurisdiction

by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgement, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution."

Also :

" That after clause (3) of article 308, the following new clause be inserted :—

'(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgement, decree or order Of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court."

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed section 4— *in* case they are not finally disposed of before the 26th January, assuming that to be the date on which this Constitution comes into existence. The important words are—" to dispose of the appeal ". There is no power to entertain an appeal. And the other important words are—" such jurisdiction authorised by law ", that is to say, references to the recent Act that was passed. The Privy Council will have no other jurisdiction, no more jurisdiction than what we have conferred. It has been so arranged by consultation that in all probability, on the date on which this Constitution comes into existence the Privy Council would have disposed of all the cases which had been left to them for disposal under that particular enactment. But it might be that either a case remains part-heard, or a case has been disposed of in the sense that the hearing has been closed, but the decree has not been drawn, and in that sense it is pending before them. It was felt that rather than to provide for a transfer of undisposed of part-heard cases to the Supreme Court which would cause a great deal of hardship to litigants, it was desirable, to make an exception to our general rule, that the jurisdiction of the Privy Council will end on the date on which the Constitution comes into existence. That is the main purpose of amendment No. 6.

With regard to amendment No. 7, it is well-known that in some of the Indian States there are Privy Councils which supervise the judgements of their High Courts, for the reason that they did not recognise the jurisdiction of the Privy Council or rather, the Privy Council of His Majesty in England. They, therefore, had their own Privy Council. Now it is felt that in view of the provision in the Constitution that there should be direct relationship between the Supreme Court and the High Court, in the different States, both in Part III and in Part I, this intermediary institution of a Privy Council of an Indian State in Part III should be statutorily put an end to, so that on the 26th January, all appeals in any State from a High Court in a State in Part III will automatically come up to be disposed of by the Supreme Court.

I am told that these Privy Councils are called by different names in the different States. If that is so, the Drafting Committee proposes to get over that difficulty by having definition of Privy Council in our article 306 so as to cover the different nomenclatures and variations of these institutions.

\* \* \* \* \*

**Mr. President** : Dr. Ambedkar, would you like to say anything ?

**The Honourable Dr. B. R. Ambedkar** : Sir, I do not think that anything that has been urged in favour of the amendments that have been moved raises any matter of substance. It is more a matter of sentiment, and I think from the point of view of convenience it is much better that we should have this clause and not feel in any way humiliated in doing it, because even if the Privy Council were to continue to exercise jurisdiction, within the limited terms mentioned in clause (3), it should not be forgotten, and I think my friends who have moved the amendments do seem to have forgotten the fact, that that jurisdiction is. not the inherent jurisdiction of the Privy Council but the jurisdiction which this Assembly has conferred upon them. The Privy Council as a matter of fact would be acting as the agent of this Assembly to do a certain amount of necessary and important work. I, therefore, do not think there is any cause for feeling any humiliation or that we are really bartering away our independence.

With regard to the point raised by my Friend Prof. Saksena in which he referred to the foot-note to article 308. I am quite free to confess that on a better consideration, it was found by the Drafting Committee that the removal of difficulties clause may not be properly used for this purpose. In order to remove all doubt, we thought it was better to have a separate clause like this to confer jurisdiction by the Constitution itself.

**Mr. President** : Then I will put he amendments to vote.

*[Both the amendments moved by Dr. Ambedkar as mentioned before were adopted: Other amendments were negatived. Article 308, as amended, was added to the Constitution.]*

## ARTICLE 310

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :—

" That for article 310, the following be substituted :—

**310.** (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on his

date the judges of the High Court in the corresponding State, and shall hereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression ' judge ' does not include an acting judge or an additional judge.'

this article is merely what we used to call a ' ' carry over article ' ' merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

\* \* \* \* \*

**Mr. Nazirudin Ahmad :** Sir, I move :

' ' That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article 310, for the words ' as are provided for under article 197 of this Constitution in respect of the judges of such High Court ' the words as they were entitled to immediately before the said commencement ' be substituted."

Clause (1) of this article provides that the Judges of High Court would on the date on which the Constitution *comes* into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

**The Honourable Dr. B. R. Ambedkar :** May I draw attention to the fact that this amendment anticipates Schedule II ? This matter is to be dealt with under Schedule II and the proper time would be when Schedule II is before the House.

*[Amendment of Mr. Ahmed was negatived. Dr. Ambedkar's amendment as mentioned earlier was adopted. Article 310 was added to the constitution.]*

## ARTICLE 311

**The Honourable Dr. B. R. Ambedkar;** Sir, I move :

" That for article 311, the following article be substituted :—

(Provisions as to provincial presidents of the union and the Speaker and deputy speaker

thereof)

"311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all powers and perform all the duties conferred by the provisions of this Constitution on Parliament.

*Explanation.*—For the purposes of this clause, the Constituent Assembly of the Dominion of India includes—

(i) the members chosen to represent any State or other territory for which representation is provided under clause (2) of this article, and

(ii) the members chosen to fill casual vacancies in the said Assembly.

(2) The President may by rules provide for—

(a) the representation in the provisional Parliament functioning under clause (1) of this article of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,

(b) the manner in which the representatives of such States or other territories in the provisional parliament shall be chosen, and (c) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, also a member of a House of the Legislature of a Governor's Province or an Indian State, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.

(4) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1) of this article."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 311, the following be substituted :—

' (3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or an Indian State

corresponding to any State for the time being specified in Part III of the First Schedule or a minister for any such State, then as from the date of commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy'."

Sir, I move:

" That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted :—

' (3a) Notwithstanding that any such vacancy in the Constituent assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred.' "

The object of this clause is that when constituting a provisional Parliament, it is proposed to dispense with what is called double membership.

The other provisions are merely ancillary.

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**Mr. President** : Dr. Ambedkar, have you anything to say ?

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir, before I begin, I would like your permission to omit the word " becomes " in clause (3) of amendment No. 195, occurring between " thereafter " and " at any time before... ". The word is unnecessary.

Now, with regard to the various amendments, it seems to me that there are only three that call for some consideration. The first is the amendment of my Friend Mr. Kamath who said that in clause (4) of this article, there is a certain account of discrepancy between the provisions relating to the carry-over of the Deputy Speaker of the Centre and the absence of any such provision with regard to the carry-over of the Speaker in the Provinces. I myself, and the Drafting Committee were conscious of this difference between the two provisions, and we had intended to introduce subsequently an amendment to make good the lacuna. Mr. Kamath may, therefore, rest assured that the Drafting Committee will not allow this difference to continue, but will make good by an amendment.

The other point of some substance was the one raised by my Friend Mr. Muniswamy Pillay with regard to the representation of the Scheduled Castes in the Provisional Parliament. The position is this. There are at present 310 Members of this Assembly, and the Provisional Parliament will also continue to

consist of 310 Members. On the basis of population which is the principle adopted for the representation of the Scheduled Castes in the future Parliament, on a purely population basis, they should get 45 seats out of this 310. They have, as a matter of fact, today only 28 seats. The article makes a definite provision that there shall be no diminution in the 28 seats they have now. But with regard to making good the difference between the 45 to which they are entitled on the basis of population and the 28 which they have got, I think we have left enough power in the hands of the President to adopt and modify the rules so as to make good the deficiency, as far as it would be practicable to do so under the provisions of new article 312 F.

Now I come to the amendment of Mr. Pataskar. So far as I have been able to understand him, there is really no difference between the draft article and the amendment suggested by him, in principle. Both article 311 as I have moved and the amendment as moved by Mr. Pataskar agree that we ought to make a provision for the abolition of dual membership. The only question that remains is how it is to be done. According to the provisions contained in this article, what is stated is that the vacancy shall occur only from the commencement of the Constitution. He will continue sitting and functioning as a Member until that date, that is to say, 25th January 1950, assuming that the Constitution comes into existence on the 26th January. But elections to fill the seats which have so become vacant may be held at any time before the commencement of this Constitution so that when the Constituent Assembly meets as the provisional Parliament there may not be any sudden depletion in its membership. What my Friend Mr. Pataskar wants is that the vacancy should come into effect from the commencement of the Constitution, and that the unseating should take place from one month thereafter. That is the only difference. It seems to me that it is really a matter of detail as to which date we should adopt for vacancy and which date we should adopt for unseating. The reason why we have adopted the 6th October 1949 as the date with reference to which the right of a Member to continue as such Member is to be determined is because it is the date on which we commenced this session of the Constituent Assembly. I do not wish to dogmatise that there is any particular virtue in the 6th October 1949, nor will Mr. Pataskar say that there is any virtue in the provision that he has moved by his amendment. As I said, there is no difference in principle, and we are all agreed that double membership should be avoided, and I, therefore, think that the amendment that I have moved.

**Shri H. V. Pataskar:** My amendment gives the option to the Member.

**The Honourable Dr. B. R. Ambedkar :** That, I think, will create a lot of complication. If the Member is given the option, that will create

complication, because it may be that the same evil which we want to do away with may be repeated. We must take precaution to see that the evil is not repeated. I, therefore, submit that the provisions contained in 311 should commend themselves to the House.

**Shri Ram Sahai** (Madhya Bharat) : What about the amendment moved by Mr. Sita Ram Jajoo ?

**The Honourable Dr. B. R. Ambedkar** : We had anticipated the point raised by him, and we have modified by amendment 195 in which I have made provision for Indian States. The only thing I have not made provision for is for persons holding offices of profit.

**Mr. President** : I shall now put the amendments to vote one by one.

*[ 6 Amendments by Mr. Kamath, 2 by Mr. Tyagi, 4 by Mr. Muniswamy Pillay, one by Mr. Saksena and 4 by others were negatived. Article 311 as amended by Dr. Ambedkar's amendment was added to the Constitution.]*

## ARTICLE 312-F

**The Honourable Dr. B. R. Ambedkar** : Sir, I move :

" That after article 312-E, the following new article be inserted :— "

(Provisions as to this filling of casual vacancies in the provisional President and the Provisional legislatures of the states)

312-F. (1) Casual vacancies in the seats of members of the provisional Parliament functioning under clause (7) of article 311 of this Constitution including vacancies referred to in clauses 3 and (3a) of that article] shall be filled and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in connection with elections to fill such vacancies shall) be regulated—



(a) in accordance with such rules as may be made in this behalf by the President, and

(b) until rules are so made, in accordance with the rules relating to the filling of casual vacancies in the Constituent Assembly of the Dominion of India and matters connected therewith in force at the time of the filling of such vacancies or immediately before the commencement of this Constitution, as the case may be, subject to such exceptions and modifications as may be made therein before such commencement by the President of that Assembly and thereafter by the President of the Union :

Provided that where any such seat as is mentioned in this article is, immediately before it becomes vacant, held by a person belonging to the Scheduled Castes or to the Muslim or Sikh community and representing a State for the time being specified in Part I of the First Schedule, the person to fill such seat shall, unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same community:

Provided further that at an election to fill any such vacancy in the seat of a member representing a State for the time being specified in Part I of the First Schedule, every member of the Legislative Assembly of that State shall be entitled to participate and vote.

Then I am moving my amendment No. 205 to substitute a different explanation.

" That in amendment No. 164 of List III (Second Week), for the Explanation to clause (1) of the proposed new article 312-F, the following Explanation be substituted:—

*Explanation.*—For the purpose of this clause

(a) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 300-A specifying the Scheduled Castes in relation to that corresponding State ;

(b) all the Scheduled Castes in any Province or State shall be deemed to be a single community."

Then I come to sub-clause (2).

(2) Casual vacancies in the seats of members of a House of the provisional

Legislature of a State functioning under article 312 or article 312-C of this Constitution shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of or in connection with elections to fill such vacancies) shall be regulated in accordance with such provisions governing the

filling of such vacancies and regulating such matters as were in force immediately before the commencement of this Constitution subject to such exception and modifications as the President may by order by direct."

I do not think that any explanation is necessary. The provisions are quite clear. If any point is raised in the course of the debate, I shall be quite prepared to offer such explanation as I could give.

\* \* \* \* \*

**The Honourable Dr. B. R. Ambedkar** : Sir, just one or two points that have been raised in the course of this debate. The first point that has been touched upon by Mr. Saksena and Pandit Bhargava was in relation to the continuance of the representation of the Muslims and the Sikhs during this interim period. They object to this carry over on the ground that the Muslims and Sikhs have surrendered their right to special representation under the arrangements which have been entered into during the course of the proceedings of this Constituent Assembly. My submission on this point is this, that whatever arrangements have been made, those arrangements are made in respect of the permanent structure of Parliament which is to come into operation under this Constitution. That being so, I think it would not be right nor justifiable to alter the structure of the Constituent Assembly which in the main we are carrying over and constituting it as a Provisional Parliament.

With regard to the amendment of Shrimati Purnima Banerjee, I do not think it is necessary to make a specific provision for the retention of women in this Constituent Assembly. I have no doubt about it that the President in the exercise of his powers of rule-making will bear this fact in mind and see that certain number of women members of the Constituent Assembly or of the various parties will be brought in as members of the Provisional Parliament.

With regard to Mr. Munniswamy Pillay's amendment, the new thing he seeks to introduce is the provision for the Scheduled Tribes. As a matter of fact there is no objection to making provision for the Scheduled Tribes but the point is this that at present there is no enumeration of Scheduled Tribes, because Scheduled Tribes as such has not been recognised under the Government of India Act, 1935. Whatever tribes are included for the purposes of representation under the Government of India Act are called backward tribes. Consequently, if my Friend Mr. Munniswamy Pillay were to leave this matter in the hands of the Drafting Committee, we shall probably make some suitable arrangement to give effect to his

amendment.

**Mr. President** : I will put the amendment to vote now.

*[3 amendments were negatived. Article 312-F as amended by Dr. Ambedkar's amendment was added to the Constitution]*

\* \* \* \* \*

**Mr. President** : Then we take up Schedule IV.

**Shri T. T. Krishnamachari** : Sir, I move that Schedule IV be deleted.

**Some Honourable Members** : How can it be deleted ?

**Mr. President** : So far as the Drafting Committee is concerned, they have been moving for deletion of particular articles. Now, there are amendments to this Schedule IV. I think it will be better if Dr. Ambedkar were to explain the position as to why the Schedule is dropped, because Members have given notice of amendments. That will make the position clear.

**The Honourable Dr. B. R. Ambedkar** : Mr. Krishnamachari will explain.

\* \* \* \* \*

**The Honourable Dr. B. R. Ambedkar** : Sir, with regard to the Instrument of Instructions, there are two points which have to be borne in mind. The purpose of the Instrument of Instructions as was originally devised in the British Constitution for the Government of the colonies was to give certain directions to the head of the states as to how they should exercise their discretionary powers that were vested in them. Now the Instruments were effective in so far as the particular Governor or Viceroy to whom these instructions were given was subject to the authority of the Secretary of State. If in any particular matter which was of a serious character, the Governor for instance, persistently refused to carry out the Instrument of Instructions issued to him, it was open to the Secretary of State to remove him, and appoint another and hereby secure the effective carrying out of the Instrument of Instructions. So far as our Constitution is concerned, there is no functionary created by it who can see that these Instruments of Instructions are carried out faithfully by the Governor.

Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagre. He has hardly any discretion

at all. He has to act on the advice of the Prime Minister in the Matter of the election of members of the Cabinet. He has also to act on the advice of the Prime Minister and his Ministers of State with respect to any particular executive or legislative action that he takes. That being so, supposing the Prime Minister does not propose, for any special reason or circumstances, to include in his Cabinet members of the minority community, there is nothing which the Governor can do, notwithstanding the fact that we shall be charging him through this particular Instrument of Instruction to act in a particular manner. It is therefore felt, having regard to the fact there is no discretion in the Governor and there is no functionary under the Constitution who can enforce this, that no such directions should be given. They are useless and can serve no particular purpose. Therefore, it was felt in the circumstances it is not desirable to have such Instrument of Instructions which really can be effective in a different set of circumstances which can by no stretch of imagination be deemed to exist after the new Constitution comes into existence. That is the principal reason why it is felt that this Instrument of Instructions is undesirable.

**Mr. President :** The question is :

" That the Fourth Schedule be deleted."

The motion was adopted.

The Fourth Schedule was deleted from the Constitution.

## **SECOND SCHEDULE**

**Mr. President :** The House will now take up Schedule II.

**The Honourable Dr. B. R. Ambedkar :** Sir, I move :

" That for Part I of the Second Schedule, the following be substituted :—

### **PART I**

*Provisions as to the President and the Governors of States  
for the time being specified in Part I  
of the First Schedule.*

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per

mensum, that is to say :

The President—10,000 rupees.

The Governor of a State—5,500 rupees.

2. There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution

3. The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively before the commencement of this Constitution.

4. While the Vice-president or any other person is discharging the functions of, or is acting as President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be."

## **PART II**

" That in the heading in Part II, after the word and figure ' Part I ' the words and figures ' or Part III ' be inserted."

" That for paragraph 7, the following paragraph be substituted :—

' 7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.'

## **PART III**

" That in paragraph 8, for the words ' respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August 1947 ' the words ' to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement ' be substituted."

## PART IV

" That for Part IV of the Second Schedule, the following be substituted :—

## PART IV

### *Provisions as to the Judges of the Supreme Court and of the High Courts of States in Part I of the First Schedule*

10. (1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:—

The Chief Justice—5,000 rupees :

Any other judge —4,000 rupees :

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11. (1) There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:—

The Chief Justice—4,000 rupees

Any other judge—3,500 rupees

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty-first day of October, 1948, and has on the date of the commencement of this Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay in amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every such judge shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part, unless the context otherwise requires.

(a) the expression " Chief Justice " includes an acting Chief Justice, and a " Judge " includes an *ad hoc* judge.

(b) " actual service " includes—

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations, excluding any time during which the judge is absent on leave; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another."

## PART V

" That in the heading of Part V, for the word ' Auditor-General ' the words ' Comptroller and Auditor-General ' be substituted.

' That for paragraph 14, the following paragraph be substituted :— '

14. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on the date of such commencement the Comptroller and Auditor-General of India under article 310A of this Constitution shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as Auditor-General of India immediately before such commencement.'

" That in paragraph 15.,for the word ' Auditor-General ' in the First place where it occurs, the words ' Comptroller and Auditor-General ' be substituted.'

With your permission, I will explain the provisions tomorrow.

**Mr. President** : The House stands adjourned till 10 o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 12th October 1949.

### WEDNESDAY, THE 12TH OCTOBER 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock (Wednesday, the 12th October 1949), Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

#### SECOND SCHEDULE—-(contd.)

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Mr. President, Sir, I would like to say a few words in explanation of the provisions contained in the Second Schedule, and I would like to begin with that part which deals with the salary of judges.

First of all, with regard to the Supreme Court, it will be seen that the salaries of the judges of the Supreme Court on the commencement of the Constitution will be for the Chief Justice Rs. 5,000 per month *plus* a free house, and the salary for a puisne judge will be Rs. 4,000 per month *plus* a free house. With regard to the Supreme Court, the position is this, that according to the Constitution, any Federal Court judge who chooses to



become a judge of the Supreme Court will be appointed as a judge of the Supreme Court. If any judge of the Federal Court therefore chooses to become a judge of the Supreme Court, the question that arises is this : whether he should get the standard salary which has been fixed under the Constitution for the judges of the Supreme Court or whether any provision should be made for allowing him to continue to draw the salary which he now gets as a judge of the Federal Court. The decision of the Drafting Committee has been that while the normal salaries of the Supreme Court judges should be as stated in the Second Schedule, provision ought to be made to enable the Federal Court Judges to draw the salary which they are drawing at present in case they choose to become judges of the Supreme Court. For this purpose, the judges of the Federal Court are divided into two categories—those who are appointed as permanent judges before the 31st October 1948 and those who are appointed after 31st October 1948. In the case of the First category, *i.e.*, those who are appointed before the 31st October 1948, they will get a personal pay which would be equivalent to the difference between the salary which has been fixed by the Second Schedule and the salary that was payable to such a judge immediately before the commencement of the Constitution. With regard to those who are appointed after the 31st October 1948, they will get at the rates fixed in the Second Schedule, so that the Chief Justice of the Supreme Court will get Rs. 2,000 more than the salary fixed for the Chief Justice under the Constitution, while the puisne judges of the Federal Court, if they go to the Supreme Court, will be getting Rs. 1,500 in excess of the normal salary which is fixed for the puisne judge of the Supreme Court.

Coming to the High Court, the normal salary fixed under the Constitution for the Chief Justice is Rs. 4,000 and the normal salary for the puisne judges is Rs. 3,500. Here again, we have got a provision in the Constitution that any judge of a High Court, if he wishes to be appointed to the High Court, under the Constitution, the President is bound to appoint him and consequently the same problem which arises under the Supreme Court also arises in the case of the High Court, because those judges who are now existing judges draw, in some cases, a higher salary than the salary that is fixed in the Second Schedule. In order, therefore, to remove any possible grievance, it has also been decided to follow the same procedure as has been followed in the case of the Federal Court, namely, to divide the judges into two categories those appointed before the 31st October 1948 and those appointed thereafter. Thus, those in category one will get an additional pay as personal pay

which will be equivalent to the difference between the salary fixed by the Constitution and the salary which they are drawing, and those who are in category two will get the salary as fixed by the Constitution.

Perhaps, it might be necessary to explain why we have adopted the 31st October 1948 as the dividing line. The answer is that the Government of India had notified to the various High Courts and the Federal Court that any judge who is appointed before the 31st October 1948 will continue to get the salaries which he was getting now but that the same assurance could not be given with respect to judges appointed after the 31st October 1948. It is in order to guarantee this assurance, so to say, that this dividing line has been introduced.

I would like to say a word or two with regard to the scale of salary fixed in Schedule II and the scale of salary obtaining in other countries, for instance, in the United States the Chief Justice gets Rs. 7,084 per month while the puisne judges get Rs. 6,958. In Canada the Chief Justice gets Rs. 4,584 and the puisne judges get Rs. 3,662. In Australia the Chief Justice of the High Court gets Rs. 3,750 and the puisne judge gets Rs. 3,333. And in South Africa the Chief Justice gets Rs. 3,892 and the puisne judges get Rs. 3,611. Anyone who compares the standard salary that we have fixed in Schedule II with the figures which I have given I think, will realise that our salaries if at all, compare much better with the salaries that are fixed for similar functionaries in other countries except the U.S.A.

In fixing these salaries we have been as fair as we could be. For instance, it would have been perfectly open for the Drafting Committee to say, following the rule that those who have been appointed before the 31st October 1948, if their salary is in excess of what is the normal salary fixed by the Constitution, we could have also made a provision that the judges of the High Court of Nagpur shall get less than the normal salary, because their salary is less than the normal salary as at present existing. But we do not propose to perpetuate any such grievance and therefore we have not introduced a countervailing provision which in strict justice to the case, the Drafting Committee would have been justified in doing. I therefore submit that so far as the salary of the judiciary is concerned there can hardly be any ground for complaint.

I come to the question of the president. The president of the Union is obviously a functionary who would replace the present Governor-General and in fixing the salary which we have Fixed, namely Rs. 10,000 we have to consider, in coming to a conclusion, as to whether it is less or more

than the salary that the Governor-General has been drawing.

As every one knows, under the Government of India Act, 1935, the salary of the Governor-General was fixed at Rs. 2,50,800 a year which came to Rs. 20,900 *per mensem*. This salary was of course subject to income-tax. Under the recent Act passed by the Legislative Assembly the salary of the Governor-General was fixed at Rs. 5,500 but that salary was free of income-tax. I am told that if the salary of the Governor-General was subject to income-tax it would come to somewhere about Rs. 14,000. In fixing the salary of the President at Rs. 10,000 we have taken into consideration two factors. One factor is that the salary of the resident should be subject to income-tax. It was felt by the Drafting Committee as well as by a large body of Members of this House that no person who is a functionary under the Constitution or a civil servant under the Constitution should be immune from any liability imposed by any fiscal measure for the general people of this country. Consequently, we felt that it was desirable to increase the salary of the president if we were to make it subject to income-tax.

The other reason why we fixed the salary at Rs. 10,000 is to be found in the salary of the existing Chief Justice of the Supreme court, which is Rs. 7,000. It was the feeling of the Drafting Committee that since the President was the highest functionary in the State there ought to be no individual who would be drawing a higher salary than the President and if the Chief Justice of the Supreme Court was drawing a salary of Rs. 7,000 it was absolutely essential, from that point of view, that the salary of the President should be somewhat above the salary of the Chief Justice. Taking all these factors into consideration we thought that the proper salary would be Rs. 10,000.

Then, the president's salary carries with it certain allowances. With regard so these allowances I might mention that when the Government of India Act, 1935, was passed, the Act merely fixed the salary for the Governor-General. With regard to the allowances the Act says that His Majesty in Council shall fix the same by Order but unfortunately the provisions of Part II of the Government of India Act, 1935, were never brought into force and consequently no such Order was ever made by His Majesty in Council although a draft of such an order was prepared in the year 1937. So far therefore as the Government of India Act is concerned, there is nothing stated with regard to the allowances and therefore that Act did not furnish the Drafting Committee any material basis for coming to any definite conclusion. Consequently the Drafting

Committee has left the matter with the provision that the President shall continue to get the same allowances which the Governor-General got at the commencement of the Constitution. Later on the Parliament may change the salary and allowances of the President subject to this, that they shall not be changed during the tenure of the President concerned.

I should like to give the House some idea as to what are the allowances which the President would be entitled to get if the provision suggested by the Drafting Committee, that the allowances payable to the Governor-General at the commencement of the Constitution should operate.

I find from the budget estimates for 1949-50 the following figures were included in the budget under the heading "Allowances to the Governor-General":

- (1) Sumptuary allowance of Rs. 45,000 per annum.
- (2) Expenditure from contract allowance Rs. 4,65,000.
- (3) State conveyance : Motor cars : Rs. 73,000.
- (4) Tour expenses : Rs. 81,000.

Total allowances are Rs. 6,64,000 per annum, according to the budget estimate of 1949-50.

I need not say, as I said, anything about the allowances, because the allowances are liable to be changed by Parliament at any time. The important question is about the salary and I submit that the salary of the President as fixed at Rs. 10,000 seems to me as also to the Drafting Committee to be a very reasonable figure, having regard to the circumstances to which I have referred.

I need not say much about the salary of the Governors. That has been fixed by an Order made recently by the Governor-General, and they appear to me to be quite reasonable and it also observes the same principle that in the provinces where the highest paid official is the Chief Justice the Governor should get something more than the Chief Justice of the province. It is from that point of view that the figure for the salary of the Governors has been fixed.

The only other provision to which I would like to refer is that originally it was not proposed to make any provision with regard to the salary of the Comptroller and Auditor General. There again, the salary has been fixed at Rs. 4,000 by Schedule II, subject to the proviso that while the present incumbent continues to function as the Comptroller and Auditor General he will get as personal pay the difference between the salary fixed by Schedule II and the salary which he is at present getting. When that

incumbent disappears and another is appointed he will get the salary that is fixed by the Schedule.

I hope that the figures suggested by the Drafting Committee as salaries for the various functionaries dealt with in this Schedule will commend themselves to the House.

\* \* \* \* \*

**Shri Prabhu Dayal Himatsingha** : ...Sir, I support the article put forward by Dr. Ambedkar.

**Pandit Hinjay Nath Kunzru** : (United Provinces : General) : Mr. President, Sir, the Draft Constitution provided that the President should get a salary of Rs. 5,000 a month and the Governor of a State Rs. 4,500 a month. It was then proposed....\*

**The Honourable Dr. B. R. Ambedkar** : President Rs. 5,5(X) a month.

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**The Honourable Dr. B. R. Ambedkar** ; Sir, all I wish to say is that there are three points which have been raised and which require some reply. Mr. Kamath attacked the provision in Schedule II allowing the judges of the Supreme Court a free house. This question of providing for a house in the Constitution for the judges of the Supreme Court was decided upon after careful consideration. It was felt that a large number of judges who would be appointed to the Supreme Court would be coming from the far ends of this country to the capital city and that it would not be proper to throw them on their own resources to find a house which would be in keeping with the dignity of their office. That was the principal reason why the Drafting Committee felt that the Government should have the obligation to provide a house.

With regard to the question of the house being free of rent. we thought that was a sort of compensation for the reduction in the salaries of the Supreme Court judges, which we had proposed in comparison with the salaries of the judges of the Federal Court. Personally I was somewhat surprised at the derisive remarks made by my honourable Friend Mr. Kamath on this particular point, because if he is objecting to a free house to anybody I should have expected him to say something about the free house which we provide both for the President as well as for the Governor-General and I personally....

**Shri H. V. Kamath** : I did not refer to rent and I do not know whether it

is a free house or not.

**The Honourable Dr. B. R. Ambedkar :** I do not think there is any substance in this particular point made by Mr. Kamath.

With regard to the question of the amount of salaries there have been a variety of views expressed in the House. My Friend Mr. Shibban Lal Saksena went to the length of saying that the President ought not to get more than one rupee. Well, I suppose, on that remuneration no one would be available to function as the President, except a wandering Sanyasi, and I have no doubt that a wandering Sanyasi would be the most unfit person to be the President of the Union, whatever may be his other virtues.

With regard to the judges' salary two questions have been raised. There are some here in this House who have said that the judges' salaries should be at a higher level than what is fixed in the Schedule. There are others who have said that the standard of salary we have fixed has no relation to the capacity of the country to pay. In my judgement, the slogan that anything that we could fix in this country should have relation to the income of the people is a good piece of political slogan, but I am not prepared to say that it is practical politics. Salaries in this country, as well as in every other country, most depend upon the law of supply and demand. Unfortunately or fortunately, there are many number of people who can be found suitable to function as Members of the Legislature, consequently we fix their salaries at a much lower level. Fortunately or unfortunately, the supply of persons who can function as judges is very limited. I do not propose to say that it is a rarity. But certainly it is a very difficult commodity to obtain and consequently we are required to pay the market price. I am sure that in my judgment the salary fixed in this Schedule conforms to what might be called the market price. Therefore, I do not think that there can be any serious quarrel on the level of salary that we have fixed.

Then I come to the amendment moved by my Friend, Mr. Himatsing ka. I should like to say that he and I have the same case in mind and I have the greatest sympathy for the case he has in mind. But what he wants to do is to ask me to accept a general proposition, that is to say, a proposition saying "any judge appointed in any territory mentioned in Part I". I think it is not desirable to introduce in these clauses an amendment in general terms, for the simple reason that after the 31st October 1948, having regard to the provisions of our Constitution, there can be no distinction in the salary of judges on a provincial basis. All judges have

been placed on the same basis irrespective of the High Court of the area within which that High Court is situated. Therefore, a general provision to remove any anomaly is not necessary because such an anomaly is not likely to recur.

The anomaly exists because in the Government of India Act certain provisions with regard to the salary of judges did make a distinction between province and province. What I would like to tell my Friend is this; that the Drafting Committee hopes that this particular case will be provided for in another manner. If that happened there would be no necessity of adopting this particular amendment and the individual affected thereby would also be benefited. But if the Drafting Committee finds that does not happen, then the Drafting Committee will reserve to itself the right of bringing in a specific amendment to remove the grievance of the specific individual we have in mind.

Before I close, I would like to ask your permission to introduce one or two phrases in the clause which have been inadvertently omitted. I refer to Part IV, paragraph II of sub-paragraph (2). I would like to introduce after the word "shall " in the seventh line the following words :

" In addition to the salaries specified in sub paragraph (1) of this paragraph."

I have also another amendment in sub-paragraph 3 of paragraph 11.1 I would omit the first " such " and after the word " judge " I would add :

" of the High Court. "

**Shri H. V. Kamath** : That is my amendment.

**The Honourable Dr. B. R. Ambedkar** : I accept it, and I now hope the House will accept the Schedule as amended.

**Shri R. K. Sidhva** : What about my amendment regarding the salaries and allowances of the President and the Governor ?

**The Honourable Dr. B. R. Ambedkar** : That will be decided by Parliament.

**Mr. President** : I shall now put the amendments to the Schedule according to the Parts. We are now on Part I of the Schedule.

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**Mr. President** : The third part to amendment 270 was the one accepted by Dr.Ambedkar. As it is, the third part reads :

" In sub-paragraph (2) of paragraph 11 in proposed Part IV of the schedule, after the words ' specified in sub-paragraph 4(1) of this paragraph, shall ' add the words in

addition to the salary specified in sub-paragraph (1) of this paragraph.

**The Honourable Dr. B. R. Ambedkar** : I would like to have my own words.

*(ALL the amendments of Dr. Ambedkar were adopted. The second schedule as amended, was added to the Constitution.)*

The Assembly re-assembled after Lunch at Four of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

[Continued..](#)

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